



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**In the Matter of a Disbarred Member of the State Bar of Arizona  
Richard B. Arrotta, SB-04-0015-R**

**Parties and Counsel:** *Applicant:* Richard B. Arrotta, represented by Thomas A. Zlaket.  
*State Bar of Arizona:* Represented by Robert VanWyck and Denise M. Quinterri

**Facts:**

Arrotta was admitted to practice in Arizona in 1974. In 1995, Arrotta pleaded guilty to two counts of felony mail fraud in federal court. He also pleaded guilty in Maricopa County Superior Court to bribery, fraudulent schemes and practices and disclosure of confidential information. The charges arose out of two separate incidents. In the first, Arrotta improperly charged and collected a contingency fee while representing clients under the National Childhood Vaccine Injury Act. Arrotta also collected fees and costs from the government in the same case. When questioned about his fee practice in vaccine cases by the State Bar, Arrotta stated in writing in 1993 that he had handled 35 vaccine cases and "in none of these cases has a contingency fee ever been charged to a client, much less any other form of fee."

The second matter involved Arrotta's unlawful activities with Philip DePalma, a claims adjuster with the State of Arizona Risk Management Section. From April 1993 to September 1994, DePalma provided to Arrotta privileged and confidential information relating to medical malpractice claims in which the State had liability exposure. DePalma gave Arrotta names of individuals with potential claims against the State and Arrotta used this information to solicit these individuals as clients. Arrotta ultimately received over \$1.1 million for these cases. In return for the confidential information received, Arrotta paid DePalma a total of \$422,850 (writing 14 checks) from April 1993 to September 1994. Arrotta described the money he paid DePalma as a "referral fee."

Arrotta served one year in a federal prison followed by two years of supervised release. He consented to disbarment and was disbarred by this Court on September 21, 1995.

On July 25, 2003, he filed an application for reinstatement to the practice of law. At the hearing, he presented dozens of letters in support of his reinstatement from lawyers, family members, judges, and clergy. A number of individuals testified on his behalf and gave glowing accounts of Arrotta's legal competence, integrity and high ethical standards. Arrotta also testified. He discussed the shame of his misconduct and imprisonment. He lost his life savings, his wife, and his career. He did not apply for reinstatement until 8 years had passed since his disbarment because he did not feel completely ready. He has now come to grips with his weaknesses, is rehabilitated and ready to return to the practice of law he loves. The State Bar did not oppose the reinstatement. The hearing officer found that Arrotta had established that he was rehabilitated, had complied with all applicable discipline orders and rules, was competent, and was fit to practice law. Arrotta was recommended for admission and that he be monitored on probation for one year. The hearing officer recommended waiving the requirement of Rule 64(a) that Arrotta be required to take the bar examination.

The Commission, by a majority of six, adopted the recommendation of the hearing officer that Arrotta's application for reinstatement be granted. The Commission did not recommend, however, that the bar examination be waived. Two Commissioners dissented from the recommendation for reinstatement. They felt constrained to make a judgment about reinstatement when there was nothing in the record to show that Arrotta has undergone a radical change in his character. He offered no evidence that he engaged in any community service, pro bono work, or made any financial contribution to a charity. He has undergone no counseling, therapy or formal rehabilitation to try to understand why he engaged in this dishonest conduct. Arrotta betrayed the high standards of this profession and should be held to an even higher standard for

re-admission. The process seemed like a whitewash and the dissenters feared that the public had not been protected.

**Issue:**

Whether applicant presented sufficient evidence to demonstrate rehabilitation, as required by Rule 64(e) and Rule 65(b)(2), Arizona Rules of the Supreme Court.

**Authority:**

Rule 64(e) provide, in part:

**(e) Proof of Rehabilitation:**

\* \* \*

Reinstatement following suspension of more than six (6) months or disbarment shall require that proof of rehabilitation be demonstrated in a reinstatement hearing. Such proof may include the status of any claims or judgments against the lawyer arising out of the lawyer's professional conduct.

Rule 65(b)(2) provides:

**(b) Proceedings**

\* \* \*

2. *Burden of Proof.* The lawyer requesting reinstatement shall have the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence.

*This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*



**ARIZONA SUPREME COURT  
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**KERBY JAMES McKANEY v. HON. JOHN FOREMAN,  
respondent, and STATE OF ARIZONA, Real Party in Interest  
CV-04-0032-SA**

**Parties and Counsel:** Kerby J. McKaney is represented by Vikki M. Liles, Deputy Public Defender. The State of Arizona is represented by Paul J. McMurdie, Deputy County Attorney.

**Facts:**

Mr. McKaney has been indicted on various charges including first degree murder. The State filed a Notice of Intent to Seek the Death Penalty and a Notice of Aggravating Factors. Mr. McKaney filed a motion asking the trial court to dismiss those notices, and foreclose the State from seeking the death penalty, because the alleged aggravating factors were not set forth in the indictment and presented to the grand jury for a determination of probable cause. Judge Foreman denied the motion. The Arizona Supreme Court accepted jurisdiction of Mr. McKaney's Petition for Special Action.

**Issue:**

"In view of the principles set forth by the United States Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Ring v. Arizona*, 536 U.S. 584 (2002) ("*Ring II*") and the requirements of the Arizona Constitution and Arizona law, must the aggravating circumstances in A.R.S. § 13-703(F) be treated as elements of the offense, and, therefore, supported by a finding of probable cause in the charging document before the state can seek the death penalty?"

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